UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

EASY SPIRIT, LLC,

Plaintiff,

19cv3299

-against-

ORDER

SKECHERS U.S.A., INC. and SKECHERS

U.S.A., INC. II,

Defendants.

WILLIAM H. PAULEY III, Senior United States District Judge:

By no later than December 23, 2020 at 5:00 p.m., the parties shall each submit a letter to this Court addressing the following question: Must a plaintiff demonstrate "secondary meaning" as part of a claim for New York common law trade dress infringement? Compare, e.g., Cartier, Inc. v. Four Star Jewelry Creations, Inc., 348 F. Supp. 2d 217, 250 (S.D.N.Y. 2004) ("Under New York common law, however, there is no requirement to show secondary meaning for distinctive designs."), with Sports Traveler, Inc. v. Advance Magazine Publishers, Inc., 25 F. Supp. 2d 154, 166 (S.D.N.Y. 1998) ("The analysis for trade dress infringement is the same under both the Lanham Act and New York State common law. Specifically, the tests for inherent distinctiveness and secondary meaning apply to both federal statutory and common law trade dress infringement claims."). The parties' letters shall each be limited to three single-spaced pages.

Dated: December 18, 2020 New York, New York

SO ORDERED:

U.S.D.J.